

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JESSIE FITZGERALD	§	PLAINTIFF
	§	
VERSUS	§	Civil Action No. 1:10CV542HSO-JMR
	§	
CITY OF GULFPORT, ET AL.	§	DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING PLAINTIFF'S COMPLAINT
PURSUANT TO FED. R. CIV. P. 4(m)**

This cause comes before the Court on the Report and Recommendation [4-1] of Chief United States Magistrate Judge John M. Roper entered in this cause on June 20, 2011. Magistrate Roper reviewed the pleadings on file and determined that based on the record, Plaintiff's Complaint should be dismissed. After a thorough review of the record and the relevant legal authorities, the Court, being otherwise fully advised in the premises, finds that the Magistrate Judge properly recommended that Plaintiff's Complaint be dismissed. Therefore, said Report and Recommendation should be adopted as the opinion of this Court and the above captioned cause should be dismissed without prejudice pursuant to FED. R. CIV. P. 4(m), as Plaintiff has failed to effectuate service of process upon Defendants.

To date, no objection to the Report and Recommendation has been filed by Plaintiff.¹ Where no party has objected to a magistrate judge's Report and

¹ The record reflects that on June 20, 2011, a copy of the Report and Recommendation was mailed to counsel for Plaintiff at her address of record.

Recommendation, the Court need not conduct a *de novo* review of it. *See* 28 U.S.C. § 636(b)(1) (“a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court need only review the report and recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Pursuant to Federal Rule of Civil Procedure 4(m),

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

FED. R. CIV. P. 4(m).

In accordance with FED. R. CIV. P. 4 (m), Plaintiff had 120 days for service of the Complaint and any summons. That period expired in this case on or about March 29, 2011. Rule 4(m) provides in part that “if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.” FED. R. CIV. P. 4(m). Plaintiff has made no discernible effort to effect service of process, nor has he requested additional time.

In addition, Plaintiff has failed to respond to the Court’s Show Cause Order entered on June 6, 2011 [3-1]. Plaintiff was warned that a failure to comply with the Court’s Order could result in the dismissal of this action. To date, Plaintiff has not complied with the Court’s Order or otherwise contacted the Court with a reason

for his non-compliance.

Having conducted the required review, the Court finds that the Magistrate Judge's Report and Recommendation thoroughly considered all issues, and is neither clearly erroneous, nor contrary to law. The Court, being fully advised in the premises, finds that the Magistrate Judge properly recommended that Plaintiff's Complaint be dismissed for failure to serve process. Said Report and Recommendation should be adopted as the opinion of this Court. Accordingly,

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [4-1] of Chief United States Magistrate Judge John M. Roper entered in this cause on June 20, 2011, should be, and the same hereby is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the above captioned cause should be and hereby is **DISMISSED WITHOUT PREJUDICE** pursuant to FED. R. CIV. P. 4(m).

SO ORDERED AND ADJUDGED, this the 14th day of July, 2011.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE